(1)

91-305

No.

Supreme Court, U.S.
FILED
AUG 12 1991
OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

October Term, 1991

IN RE: GRACE R. MASSETT,
Deceased.

ROBERT M. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

ON APPEAL FROM DISTRICT COURT FOR THE
FOURTH DISTRICT - STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR APPELLEE

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QUESTIONS PRESENTED

1. WHETHER PETITIONER WAS DEPRIVED, IN THE COURT BELOW, OF RIGHTS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

2. WHETHER §733.303(1)(A) OF THE FLORIDA PROBATE CODE IS REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES?

3. WHETHER THE LOWER COURT LACKED JURISDICTION TO HEAR AND DETERMINE THIS MATTER?

4. WHETHER DECEDENT'S DOMICILE WAS IN NEW YORK?

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LIST OF ALL PARTIES TO THE PROCEEDING.

1. Robert M. Weichert, Petitioner.

2. Elaine W. Roberts, Respondent.

3. Solicitor General of the United States, because the interpretation provision of the United States Constitution was drawn in question and made by a state court of last resort and 28 USC §2403(a) may be applicable.

4. The Attorney General of the State of Florida, because in this proceeding, the constitutionality of a statute of the State of Florida is drawn in question, the state or any agency, officer or employee thereof is not a party and the state court of last resort interpreted the state statute in its favor and 28 USC §2403(b) may be applicable.

OPINIONS BELOW

There was no formal opinion rendered in the District Court of the State of Florida, Fourth District. Its *per curiam-affirmed* decision and mandate are reproduced in appendix A and B respectively to this petition, and no official and unofficial reports of opinions were delivered in the case by other courts or administrative agencies.

JURISDICTION

1. Date of entry of judgment or entry to be reviewed is May 29, 1991.

2. By Florida Rules, no rehearing was allowed. There is no order granting an extension of time within which to file a writ of certiorari.

3. The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question or writ of certiorari is 29 USC §1257 Act of June ____, 1988, 100th Cong., 2d Sess., ____ Stat. ____, c. ____; P.L. 100-352; Article III of the United States Constitution; and §25 First Judiciary Act, 1789, Act of September 24, 1789, c. 20, 1 Stat. 73, 85-87 providing that, where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the

United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party. The fear of State Court parochialism in rejecting claims of constitutional right is well founded. Cohens v. Commonwealth of Virginia, (1821) 6 Wheat. (19 US) 304, 4 L.Ed. 97; Ableman v. Booth, (1858) 21 How (62 US) 506, 16 L.Ed. 169.

Limited to judgments of the highest court in the state (Florida) in which decision could be had, the Florida District Court for the Fourth District is the highest court, under the circumstances in this case, in which decision could be had because the State

of Florida allows no appeal or discretionary review by the Florida Supreme Court in cases, such as this, where the decision in the District Court of Appeal was *"per curiam-affirmed"*. The 1980 amendment Article V, §3(b) of the Florida Constitution severely limits the Florida Supreme Court appellate-discretionary, and original jurisdiction and will only allow discretionary review of District Court decisions that declare invalid a state statute or provision of the state constitution. Also, Rule 9.030(a)(2) of the Florida Rule of Appellate Procedure was substantially revised and amended by Article V §3(b)(3), Florida Constitution 1980 to restrict the scope of review under the Florida Supreme Court's discretionary jurisdiction to six designated categories of District Court decisions. Rule 9.030 §(a)(2)(A) subsection (ii) requires a

District Court to "expressly declare" a state statute valid before the Florida Supreme Court's discretionary jurisdiction may be invoked. This case was decided *"per curiam-affirmed"* which did not expressly, that is without opinion, explain or define, by analysis or construction declare the state statute valid. Jenkins v. State, 385 So. 2d 1356 (1980); Golden Loaf Bakery, Inc. v. Charles W. Rex Const. Co., 334 So. 2d 585 (1976); Davis v. Mandau, 410 So. 2d 915 (1981); St. Paul Title Ins. Co. v. Davis, 392 So. 2d 1304 (1980). Subsection (iV) requires "express" as well as a "direct" conflict of District Court decisions as a pre-requisite to Florida Supreme Court review, abolishing the Foley doctrine (Foley v. Weaver Drugs, Inc., 177 So. 2d 221 (Fla. 1965)).

No rehearing/en banc review is allowed by the Florida District Court since there

was not expression of conflict or certification of great public interest by the deciding court. Fla. R. App. P. 9.331.

There is a provision, however, for the Florida State Court review by certification from the United State Supreme Court. Art. V §3(6) Florida Constitution; Rule 9.030(a)(2)(C) Florida Rules of Appellate Procedure.

CONSTITUTIONAL PROVISIONS

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...nor be deprived of life, liberty, or property, without due process of law,..."

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"...to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of

counsel for his defense..."

SECTION 733.303(1)(a) OF THE FLORIDA PROBATE CODE.

STATEMENT OF THE CASE

The decedent, Grace Root Weichert Scott Massett, was at the time of her death, married to Raymond Massett, her third husband. Both resided and were domiciled at No. 4, Esther Avenue, Bridgeport, New York in the County of Madison, State of New York. In years past when decedent was married to Robert Scott, she resided at 236 Dixie Blvd., Delray beach, Florida. Robert Scott died March 29, 1974 and the decedent terminated her residence in Florida when she remarried Raymond Massett December 18, 1975 and changed her domicile and residence aforementioned. She sold her house at 236 Dixie Blvd. on December 19, 1988 after not residing therein for several years. On April 4, 1989 she suffered a stroke at her home at No. 4, Esther Avenue, Bridgeport, New York. She

was treated in the emergency room at St. Joseph's hospital in Syracuse, New York and was committed to said hospital until April 30, 1989, then released to St. Camillus Health and Rehabilitation Center in Syracuse, New York until July 10, 1989 where she received rehabilitation and recuperated well enough to be discharged and sent back to her home at No. 4, Esther Avenue, Bridgeport, New York.

The decedent traveled temporarily to St. Cloud, Florida on or about October 20, 1989. While there in St. Cloud she suffered another serious stroke and was hospitalized in St. Cloud hospital November 7, 1989 and was released to the Melbourne Rehabilitation Medicine Center in Melbourne, Florida until December 3, 1989 and was thereafter transported to Manor Care in Boynton Beach, Florida for further rehabilitation and recuperation. This stroke was more severe than the

previous and left her in a paralyzed condition wherein she could not eat and had to be fed through a feeding tube surgically inserted in her stomach. She died at Manor Care June 4, 1990.

Since her marriage to Raymond Massett, her residence and domicile have been at No. 4, Esther Avenue, Bridgeport, New York. After the decedent's death the appellee, Elaine W. Roberts, filed with the lower court, Circuit Court for Palm Beach County, Florida-Probate Division, a Petition for Administration erroneously alleging therein that the decedent's last known address was 312 No. Swinton Avenue, Delray Beach, Florida (appellee's address) and that at the time of her death, the decent was domiciled in Palm Beach County, Florida. Both of these statements are patently false. Petitioner-Appellee further alleged that the venue of her Petition for

Administration was based on the further erroneous statement that the decedent was a resident of Palm Beach County, Florida. Appellant was never served with process. He was not personally served, the post office green card receipt for sub-service will show he never received the process, and that should have alerted petitioner's attorney of the failure of attempted service, in violation of §731.301 FPC and Rule 5.040 PGR, with a formal notice that appellee's Petition for Administration had been filed with the lower court and appellant was required to serve and file written defenses within twenty (20) days. Appellant duly and timely served and filed written defenses July 27, 1990. Appellant raised the defenses of a general denial and affirmative defenses that the decedent was not at the time of her death, domiciled in Palm Beach County, Florida; that the lower court

lacked jurisdiction over the subject matter of the proceeding because, at the time of her death, Grace Root Massett, decedent, was not a resident of Palm Beach County, Florida; and further, that appellant entered a "special appearance" not waiving but preserving the issue, lack of in personam jurisdiction, due to failure of notice and service of the petition pursuant to §731.301 FPC. Thereafter, appellant duly served and filed a Notice to Admit and Demand for Interrogatories as provided under Rule 1.280 of the Florida Rules of Civil Procedure. Appellee never responded. The attorney for appellee brought a motion August 16, 1990 to strike the Notice to Admit and Demand for Interrogatories, noticing the motion for hearing September 9, 1990 which was changed by an amended notice of hearing to September 6, 1990. Appellant

prepared, served and filed his opposing affidavit to the motion to strike, which was filed September 6, 1990. The moving papers clearly indicate that the September 6, 1990 proceeding before the lower court was solely for the determination of the motion to strike. No order was ever received by appellant striking the notice to admit and demand for interrogatories, and so, appellee has amitted that decedent never resided at 312 North Swinton Avenue, Delray Beach, Florida, and therefore the Probate Court is without jurisdiction. On September 17, 1990 appellant received from petitioner's attorney a copy of a Final Order of the lower court admitting the will to probate and appointing petitioner-appellee the personal representative of the estate together with oath of representative, designation, acceptance and copy of letters of administration issued by the

Honorable Michael E. Gersten, Circuit Judge. Notice of Appeal dated September 19, 1990 was duly and timely filed with the clerk of the lower court together with appellate fees.

The stage in the proceedings at which the federal questions sought to be reviewed were raised, was on the appeal to the Florida District Court for the Fourth District, from the order of the Florida Circuit Court for Palm Beach County, in appellant's brief, Point No. 1-4 and were passed upon by that court *"per curiam-affirmed"*, without opinion.

PETITION OF CERTIORARI-
INTRODUCTORY PARAGRAPH

The petitioner, Robert M. Weichert, respectfully prays that a writ of certiorari issue to review and summarily reverse the mandate and decision of the District Court of Appeal of the State of Florida-Fourth District filed May 29, 1991, the highest court of that state in which a decision could be had, where is drawn in question the validity of a statute of, or an authority exercised under the State of Florida, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity; and also, where is drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege or

exemption specially set up or claimed by either party.

ARGUMENT

The Florida State Court of last resort has decided the federal questions raised, that is, whether appellant was afforded due process and whether §733.303(1)(a) FPC is repugnant to the United States Constitution, in a way that conflicts with the decision of another state court of last resort or of the United States Court of Appeals, which recognize and provide that all citizens of the United States shall be afforded due process under the Fifth and Fourteenth Amendments to the United States Constitution and that no state shall pass any statute that is repugnant to the United State Constitution.

The state court has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with

applicable decisions of this court.

Appellant was denied his day in court. The Florida Circuit Court Judge, Michael E. Gersten proceeded without subject matter jurisdiction, proceeded over appellant's objection to inpersonam jurisdiction, and without receiving requisite proof thereof by petitioner, and proceeded without allowing appellant his right to offer his proof and to hear and determine all of the allegations contained in the petition and appellant's answer; he entered his order issuing letters testamentary to the appellee, Elaine W. Roberts and denying them to appellant, thereby denying procedural due process to appellant. Subsequently, after appellant's timely notice of appeal was filed with the Clerk of the Circuit Court, Judge Gersten allowed surreptitious and secret documents,

unknown to appellant, to be contained in the record, ultimately to be reviewed by the Florida District Court of Appeal, Fourth District, which documents were extremely inflammatory and prejudicial to the appellant herein and again denying procedural due process to him. Appellant discovered those documents on November 26, 1990, upon his designation of the record on appeal from the Circuit Court to the District Court, Fourth District.

Pursuant to §733.303(1)(a) of the Florida Probate Code, appellant, without any form of hearing, without any consideration of any facts or circumstances of his position in a general class of people enumerated in said statute, has been arbitrarily deprived of his right to be executor of his mother's estate and in spite of her express direction that he so serve. The loss of the right to defend against

allegations brought by a civil plaintiff may be just as severe as the loss of livelihood visited upon the police officers in Garrity v. New Jersey, 385 US 493, 497 (1967); and the lawyer in Spevack v. Klein, 385 US 511, 515 (1967); the loss of government contracting business imposed on the architects in Lefkowitz v. Turley, 414 US 70, 71 (1973); and the loss of political party office by the office holder in Lefkowitz v. Cunningham, 431 US 801, 805 (1977). At the core of the concept of "due process of law" is the notion that the government can not deprive a person of his life, liberty or property unless that person is given the opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 US 532, 542 (1985). An essential principle of due process is that a deprivation of life, liberty or property be preceded by notice and

opportunity for hearing appropriate to the nature of the case. Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 313 (1950). The fundamental requirement of due process is the opportunity to be heard at the meaningful time and in a meaningful manner. Brock v. Roadway Express, Inc., 107 S. Ct. 1740, 1746-1747 (1987). More particularly, the person threatened with deprivation must be given the opportunity to present reasons for proposed action should not be taken, and an opportunity to present his side of the story. Loudermill, 470 US at 546. This due process right to an opportunity to be heard is an intrinsic feature of the judicial process. Logan, 455 US at 429; Boddie v. Connecticut, 401 US 371, 377 (1971). Independent due process consideration forbids dispositive orders that are punitive, whether designed to

insure the orderly and just conduct of the cases before them or whether a party declines to provide discovery. Landis v. North Am. Co., 299 US 248, 254-255 (1936); Hovey v. Elliott, 167 US 409 (1897). Federal courts may remedy misconduct pursuant to inherent powers as a court of equity. SEC v. Thomas, 116 F.R.D. 230, 233 n. 2 (D. Utah, 1987). Courts have considerable power to prevent this sort of unfairness and to "level the playing field" so that neither party gains undue advantage over the other. Wehling v. CBS, 608 F. 2d 1084, 1087 n. 6 (5th Cir. 1979). The Fourteenth Amendment contains a substantive component that bars certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them. Daniels v. Williams, 474 US 327, 331, 106 S. Ct. 662, 664, 88 L. Ed. 2d 662 (1986). It encompasses a

guarantee of fair procedure; that a citizen will not suffer a deprivation of a property right without due process of law. Zinermon v. Burch, 110 S. Ct. 975, 983 (1990); Parratt v. Taylor, 451 US 527, 537, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981); Carey v. Piphus, 435 US 247, 259, 98 S. Ct. 1042, 1050, 55 L. Ed. 2d 252 (1978).

The Fifth Amendment, substantive due process, is intertwined with the Fourteenth Amendment's procedural due process, which is the substantive component previously discussed. The Sixth Amendment guarantees do not apply to civil proceedings except to the extent that they are implicit in the notion of the due process prescribed by the Fifth Amendment.

CONCLUSION

The actions and order of Judge Michael E. Gursten deprived appellant of due process, §733.303(1)(a) FPC is repugnant to the United States Constitution and the argument of the appellant herein justifies either a summary order of this court reversing and remanding this matter back to the Florida Circuit Court for a trial of the issues or a certificate from this court to the Florida State Court for further review, pursuant to Article V, §3 (6) Florida Constitution, Rule 9.03(a)(2)(C) Florida Rules of Appellate Procedure.

Respectfully Submitted,

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(315) 635-3224
Attorney for Appellant

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT
JANUARY TERM 1991

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____/

CASE NO. 90-2687

DECISION FILED MAY 29, 1991

Appeal from the Circuit Court for Palm Beach County; Michael E. Gersten, Judge.

Robert M. Weichert, Baldwinsville, NY, pro se appellant.

Larry Klein of Klein & Walsh, P.A., West Palm Beach, and Nowlin & Nowlin, P.A., Delray Beach, for Appellee-Elaine W, Roberts, Personal Representative of the Estate of Grace R. Massett.

PER CURIAM.

AFFIRMED.

HERSEY, C.J., DOWNEY and DELL, JJ., concur.

MANDATE

from

DISTRICT COURT OF APPEAL OF THE

STATE OF FLORIDA, FOURTH DISTRICT

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable George W. Hersey, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: June 14, 1991

CASE NO. 90-2687

COUNTY OF ORIGIN: PALM BEACH

T.C. CASE NO. 90-2547 CPS

STYLE: IN RE: ESTATE OF GRACE R. MASSETT

CLYDE L. HEATH, CLERK
District Court of Appeal
Fourth District

ORIGINAL TO: HON. JOHN B. DUNKLE, CLERK

cc: Robert M. Weichert
Larry Klein
Nowlin & Nowlin, P.A.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ORDER ADMITTING WILL TO PROBATE AND APPOINTING PERSONAL REPRESENTATIVE

The instrument presented to this Court as the Last Will of GRACE R. MASSETT, deceased, having been executed in conformity with law, and made self-proved at the time of this execution by the acknowledgement of the decedent and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, and no objection having been made to its probate, and the Court finding that decedent died on June 4, 1990, it is

ADJUDGED that the Last Will and Testament bearing date February 26, 1982 and attested by Lynda J. Kramer and Karen L. Skeels, and the First Codicil thereto dated December 15, 1988 and attested by

admitted to probate according to law as and for the Last Will of the Decedent, and the Court further having considered the Petition of Elaine W. Roberts to be appointed as Personal Representative, and it appearing to the Court that the Will of the decedent designated Harold R. Weichert, Robert M. Weichert and Elaine W. Roberts as co-Personal Representatives, and that Harold R. Weichert has renounced the appointment, and Robert M. Weichert is not qualified under the laws of Florida to serve as Personal Representative, and the Court being fully advised of the premises, it is upon consideration

ORDERED AND ADJUDGED that Elaine W. Roberts is appointed Personal Representative of the estate of the decedent, and that upon taking the prescribed oath, filing designation of resident agent and acceptance, Letters of

Administration shall be issued.

ORDERED this 6th day of September, 1990.

MICHAEL E. GERSTEN
CIRCUIT JUDGE

LETTERS OF ADMINISTRATION

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

TO WHOM IT MAY CONCERN:

WHEREAS, GRACE R. MASSETT, a resident of Palm Beach County, died on June 4, 1990, owning assets in the State of Florida, and

WHEREAS, Elaine W. Roberts, has been appointed Personal Representative of the estate of decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I the undersigned Circuit Judge, declare Elaine W. Roberts, to be duly qualified under the laws of the State of Florida to act a Personal Representative of the estate of GRACE R. MASSETT, deceased, with full power to administer the estate according to law;

to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

WITNESS my hand and seal of this Court this 6th day of September, 1990.

MICHAEL E. GERSTEN
Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT, P.O. BOX A, WEST PALM BEACH, FL 33402

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

Appellant(s),

vs.

Appellee(s).

_____/

CASE NO. 90-02687
L.T. CASE NO. 90-2547 CPS PALM BEACH

May 29, 1991

BY ORDER OF THE COURT:

ORDERED, Appellee's January 30, 1991 motion to strike appellant's brief is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

CLYDE L. HEATH, CLERK

cc: Robert M. Weichert
Nowlin & Nowlin
Larry Klein

/MG

IN THE DISTRICT COURT OF APPEAL IN THE STATE OF FLORIDA, FOURTH DISTRICT, P.O. BOX A, WEST PALM BEACH, FL 33402

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____
Petitioner(s),

v.

_____

_____
Respondent(s).

CASE NO. 91-0278

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER

March 5, 1991
BY ORDER OF THE COURT:

ORDERED that the January 30, 1991 petition for writ of mandamus is denied.

I hereby certify the foregoing is a true copy of the original court order.

CLYDE L. HEATH,
CLERK

cc: Robert M. Weichert
Larry Klein
Nowlin & Nowlin, P.A.
cms

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT, P.O. BOX A, WEST PALM BEACH, FL 33402

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____
Appellant(s),

v.

_____
_____
_____
Appellee(s).

CASE NO. 90-2687

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER

December 3, 1990
BY ORDER OF THE COURT:

ORDERED that Appellant, Robert M. Weichert's October 19, 1990 pro se motion to stay all further proceedings in this matter pending this appeal is denied, without prejudice to the appellant seeking an order of the trial court granting a stay.

I hereby certify the foregoing is a true copy of the original court order.

CLYDE L. HEATH,
CLERK.

cc: Robert M. Weichert, pro se
James W. Nowlin, Jr., Esq.

cms

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
CASE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ORDER DENYING MOTION FOR STAY

THIS MOTION coming on this day to be heard on the Motion for Stay executed by ROBERT M. WEICHERT on November 7, 1990, and the Court having considered the Motion for Stay and the Affidavit attached thereto, and having heard the argument of counsel, and being fully advised of the premises, it is upon consideration

ORDERED AND ADJUDGED that the Motion for Stay be and the same is hereby denied.

DONE AND ORDERED at Delray Beach, Florida, this the 27th day of March,

1991.

JUDGE MICHAEL E. GERSTEN
Circuit Judge

Coy furnished to:

Nowlin & Nowlin, P.A.
50 S.E. Fourth Avenue
Delray Beach, FL 33483

Robert M. Weichert
46 Oswego Street
Baldwinsville, NY 13027

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

AMENDED NOTICE OF APPEAL

The Respondent-Appellant, ROBERT M. WEICHERT, hereby appeals to the Fourth District Court of Appeals for the State of Florida from an Order by the Honorable Michael E. Gersten, Circuit Judge, dated September, 1990, and from each and every part thereof. The nature of the Order is a Final Order which Order admits Will to probate and appoints Personal Representative.

Dated: September 28, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

NOTICE OF APPEAL

The Respondent, ROBERT M. WEICHERT, hereby appeals to the Fourth District Court of Appeals for the State of Florida from an Order by the Honorable Michael E. Gersten, Circuit Judge, dated September 6, 1990, and from each and every part thereof.

Dated: September 19, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
L.T. CASE NO. 90-2547-CPS PALM BEACH
CASE NO. 90-02687

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

NOTICE OF APPEAL

That Respondent-Appellant, Robert M. Weichert, hereby appeals to the Fourth District Court of Appeals for the State of Florida from an Order by the Honorable Michael E. Gersten, Circuit Court Judge, dated March 27, 1991, denying Respondent-Appellant's Motion for Stay, and from each and every part thereof.

Dated: April 23, 1991.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent-Appellant
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

FORMAL NOTICE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

TO: Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

YOU ARE NOTIFIED that a Petition for Administration has been filed in this Court, a true copy of which is attached. You are required to serve written defenses on the undersigned within 20 days after service of this notice, exclusive of the day of service, and to file the original of the written defenses with the clerk of the above Court either before service or immediately thereafter. Failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

Dated this 12th day of July, 1990.

JAMES W. NOWLIN, JR., ESQ.
Florida Bar No. 59148
Nowlin & Nowlin, P.A.
50 SE Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

PETITION FOR ADMINISTRATION

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

Petitioner alleges:

1. Petitioner has an interest in the above estate as a beneficiary and designated Personal Representative. Petitioner's name and address are: Elaine W. Roberts, 312 North Swinton Avenue, Delray Beach, FL 33444, and the name and address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, GRACE R. MASSETT, whose last known address was: 312 North Swinton Avenue, Delray Beach, FL 33444 and whose age was 84, and whose social security number is 105-01-7004, died June 4, 1990, at Manor Care Nursing Home, Boynton Beach, Florida, and at the time of death decedent was domiciled in Palm Beach

County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of the decedent's surviving spouse, if any, their addresses and relationship to decedent, and the ages of any who are minors, are:

NAME: Elaine W. Roberts ADDRESS: 312 N. Swinton Ave., Delray Beach, FL33444 Relationship: Daughter AGE: Legal

NAME: Harold R. Roberts ADDRESS: 103 Dorset Road, Syracuse, NY 13210 RELATIONSHIP: Son AGE: Legal

NAME: Robert M. Weichert ADDRESS: 46 Oswego Street, Baldwinsville, NY 13027 RELATIONSHIP: Son AGE: Legal

NAME: Regina Ann Weichert ADDRESS: 103 Dorset Road, Syracuse, NY 13210 RELATIONSHIP: Granddaughter AGE: Legal

NAME: Wendy Sue Weichert ADDRESS: 46 Oswego Street, Baldwinsville, NY 13027 RELATIONSHIP: Granddaughter AGE: Legal

NAME: Vera Scott ADDRESS: Route 1, Box 456, Macclenny, FL 32063 RELATIONSHIP: Niece AGE: Legal

NAME: Anna Marie Massett ADDRESS: P.O.Box 2163, Bridgeport, NY 13030 RELATIONSHIP: Granddaughter AGE: Legal

NAME: Robert Scott Weichert ADDRESS: 46 Oswego Street, Baldwinsville, NY 13027 RELATIONSHIP: Grandson AGE: Legal

NAME: Raymond Massett ADDRESS: P.O. Box 2163, Bridgeport, NY 13030 RELATIONSHIP: Husband AGE: Legal

NAME: Robert Weichert, Jr. ADDRESS: 103 Dorset Road, Syracuse, NY 13210 RELATIONSHIP: Grandson AGE: Legal

NAME: Cyrus Weichert ADDRESS: 103 Dorset Road, Syracuse, NY 13210 RELATIONSHIP: Grandson AGE: Legal

NAME: William Weichert ADDRESS: 103 Dorset Road, Syracuse, NY 13210 RELATIONSHIP: Grandson AGE: Legal

NAME: James Weichert ADDRESS: 46 Oswego

Street, Baldwinsville, NY 13027 RELATIONSHIP: Grandson AGE: Legal

NAME: James A. Roberts ADDRESS: 44 Winter Street, Exeter, NH 03833 RELATIONSHIP: Grandson AGE: Legal

NAME: Jeffrey Roberts ADDRESS: 312 N. Swinton Ave., Delray Beach, FL 33444 RELATIONSHIP: Grandson AGE: Legal

NAME: Erin Roberts ADDRESS: 44 Winter Street, Exeter, NH 03833 RELATIONSHIP: Great Grandson AGE: Legal

NAME: Robert F. Scott ADDRESS: Route 1, Box 456, Macclenny, FL 32063 RELATIONSHIP: Step-nephew AGE: Legal

NAME: Thomas Scott ADDRESS: Route 1, Box 456, Macclenny, FL 32063 RELATIONSHIP: Step-nephew AGE: Legal

NAME: Leona Murphy ADDRESS: RFD 3, Box 76, Canastota, NY 13032 RELATIONSHIP: Friend AGE: Legal

NAME: Susan Weichert ADDRESS: 46 Oswego Street, Baldwinsville, NY 13027

RELATIONSHIP: Daughter-in-Law AGE: Legal Bridgeport New York United Methodist Church, Bridgeport, New York 13030
Unity Church of Syracuse, New York Seneca Drive, Syracuse, NY 13205
Silent Unity Church, Lees Summit, Missouri 64063

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County, Florida at the time of her death.

5. Elaine W. Roberts, whose address is 312 North Swinton Avenue, Delray Beach, FL 33444, and who is qualified under the laws of the State of Florida to serve as Personal Representative of decedent's estate is entitled to preference in appointment as Personal Representative because of being so designated in decedent's Last Will and Testament, because Harold R. Weichert who was also designated as co-Personal Representative,

has waived his right to serve as co-Personal Representative and has joined in this Petition asking that Petitioner be appointed as the sole Personal Representative, and because Robert M. Weichert named in the will as a co-Personal Representative is not qualified pursuant to Florida Statute 733.303.

6. The nature and approximate value of the assets in this estate are: Securities $130,000; real estate in St. Lucie County, Florida $50,000.

7. This estate will not be required to tile a federal estate tax return.

8. The original of the decedent's Last Will and Testament dated February 26, 1982 and First Codicil thereto dated December 15, 1988, accompany this petition.

Petitioner requests that Elaine W. Roberts be appointed Personal Representative of the Florida estate of

the decedent.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Executed this 10th day of July, 1990.

_____
ELAINE W. ROBERTS, PETITIONER

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, FL 33483
(407) 276-9754

By: _____
JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

LAST WILL AND TESTAMENT OF

GRACE R. MASSETT

I, GRACE R. MASSETT, a resident of and domiciled in Palm Beach County, Florida, do hereby make, publish and declare this instrument to be my Last Will and Testament, hereby revoking any and all Wills and Codicils I formerly may have made.

ARTICLE I - DEBTS

I direct that all debts which I am legally obligated to pay at the time of my death, my last illness and funeral expenses and costs of administration of my estate shall be paid as soon as practicable after my death. I direct that my body be cremated and my ashes be placed in the burial plot alongside my mother and father, GEORGE C. ROOT and DAISY ELLA ROOT, in Oakwood Cemetery, Syracuse, New York. I authorize my Personal Representative to spend up to

FIVE HUNDRED ($500.00) DOLLARS for a headstone.

ARTICLE II - BEQUEST OF PERSONAL PROPERTY

I give and bequeath all of my tangible personal property to the below named persons who survive me:

A. To my son, DR. HAROLD R. WEICHERT, all of my Carnival Glass, my cut and pressed glass and all china.

B. To my son, ROBERT M. WEICHERT, all my Stickley furniture at Delray Beach, Florida.

C. To my granddaughter, REGINA ANN WEICHERT, my white gold diamond ring with two side stones.

D. To my granddaughter, WENDY SUE WEICHERT, my yellow gold diamond ring and turquoise butterfly ring.

E. To my niece, VERA SCOTT, of Macclenny, Florida, my five diamond wedding ring and my chest of silver.

F. To my granddaughter, ANNA MARIE

MASSETT, of Bridgeport, New York, my solitaire diamond ring which was given to me by my husband, RAYMOND MASSETT.

G. To my grandson, ROBERT SCOTT WEICHERT, my silver coin collection which is presently in a safe deposit box in the First Trust and Deposit Company of Syracuse, New York.

H. To my daughter, ELAINE ROBERTS, my stickley table at Bridgeport, New York.

I. I direct that all of my automobiles be sold and that the proceeds be added to the rest, residue and remainder of my estate.

J. If I have prepared a list disposing of items of tangible personal property, I direct that the list become a part of my Will, pursuant to the provisions of Florida Statute 732.515.

K. All of the rest of my tangible personal property I give and bequeath to my sons, DR. HAROLD R. WEICHERT, ROBERT

M. WEICHERT, and my daughter, ELAINE ROBERTS, in equal shares, share and share alike, or the survivors thereof, per stirpes. If my children are unable to agree upon a distribution of the rest of my tangible personal property, I direct that my Personal Representative shall divide the same among my children and that his decision shall be binding.

ARTICLE III - CASH BEQUEST

I give, devise and bequeath the following sums of money to the following named people who survive me. In the event any of the following named individuals does not survive me, his or her bequest shall lapse and the same shall become a part of the rest, residue and remainder of my estate.

A. To my daughter, ELAINE ROBERTS, the sum of FIVE THOUSAND ($5,000.00) DOLLARS.

B. To my husband, RAYMOND MASSETT, the sum of ONE THOUSAND ($1,000.00) DOLLARS.

C. To my granddaughter, REGINA ANN WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

D. To my grandson, ROBERT WEICHERT, JR., the sum of THREE THOUSAND ($3,000.00) DOLLARS.

E. To my grandson, CYRUS WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

F. To my grandson, WILLIAM WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

G. To my granddaughter, WENDY SUE WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

H. To my grandson, ROBERT SCOTT WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

I. To my grandson, JAMES WEICHERT, the sum of THREE THOUSAND ($3,000.00) DOLLARS.

J. To my grandson, JAMES B. ROBERTS,

the sum of ONE THOUSAND ($1,000.00) DOLLARS.

K. To my grandson, JEFFREY ROBERTS, the sum of ONE THOUSAND ($1,000.00) DOLLARS.

L. To my grandson, ERON ROBERTS, the sum of ONE THOUSAND ($1,000.00) DOLLARS.

M. To my step-nephew, ROBERT F. SCOTT, of Macclenny, Florida, the sum of ONE THOUSAND ($1,000.00) DOLLARS.

N. To my step-nephew, THOMAS SCOTT, of Macclenny, Florida, the sum of TWO THOUSAND ($2,000.00) DOLLARS.

O. To my friend, LEONA MURPHY, of Canastota, New York, the sum of FIVE HUNDRED ($500.00) DOLLARS.

P. To my daughter-in-law, SUSAN WEICHERT, the sum of TWO THOUSAND ($2,000.00) DOLLARS.

Q. To VERA SCOTT, of Macclenny, Florida, the sum of FIVE HUNDRED ($500.00) DOLLARS.

R. To the BRIDGEPORT NEW YORK UNITED METHODIST CHURCH, the sum of ONE THOUSAND ($1,000.00) DOLLARS.

S. To the UNITY CHURCH OF SYRACUSE, NEW YORK, the sum of FIVE HUNDRED ($500.00) DOLLARS.

T. To the SILENT UNITY CHURCH OF Lees Summit, Missouri, for their many wonderful prayers and healing ministry, the sum of FIVE HUNDRED ($500.00) DOLLARS.

U. To the ORAL ROBERTS HEALING CRUSADE, in Tulsa, Oklahoma, the sum of FIVE HUNDRED ($500.00) DOLLARS.

V. To the WORLD HEALING CRUSADE of Blackpool, England, the sum of FIVE HUNDRED ($500.00) DOLLARS.

ARTICLE IV - DEVISE AND BEQUEST OF REMAINDER

All of the rest, residue and remainder of my estate, whether real, personal or mixed, and wheresoever situate, I give,

devise and bequeath to my children, DR. HAROLD R. WEICHERT, ROBERT M. WEICHERT and ELAINE ROBERTS, in equal shares, share and share alike, or the survivors thereof, per stirpes.

ARTICLE V - PERSONAL REPRESENTATIVE

I hereby nominate and appoint THOMAS SCOTT, of Macclenny, Florida, and my son, ROBERT M. WEICHERT, as Co-Personal Representatives of this my Last Will and Testament and direct that they serve without bond. I give and grant to my Co-Personal Representatives the power to sell at public or private sale from time to time for cash or upon credit, or partly for cash and partly for credit, and to transfer, convey, lease, exchange, mortgage or otherwise dispose of all or any part of the property, real, personal or mixed, at any time, from all or any part of my estate and upon such terms and conditions as to my Co-Personal

Representatives shall seem proper.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Delray Beach, Florida, this the 26th day of February, 1982.

_____(Seal)
GRACE R. MASSETT

Signed, sealed, declared and published by the Testatrix, GRACE R. MASSETT, as and to be her Last Will and Testament in our presence, who at her instance and request and in her presence and in the presence of each other have hereunto signed our names as witnesses thereto this 26th day of February, 1982.

LYNDA J. KRAMER Address Delray Beach, Fla.

KAREN L. SKEELS Address Lake Worth, Fla.

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

We, GRACE R. MASSETT, the Testatrix, and LYNDA J. KRAMER and KAREN L. SKEELS, the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testatrix signed and executed the instrument as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the Testatrix,

and in the presence of each other, at the instance and request of the Testatrix, signed the Will as a witness and that to the best of each witness' knowledge the Testatrix was at that time eighteen (18) or more years of age, of sound mind, and under no restraint or undue influence.

TESTATRIX:

GRACE R. MASSETT

WITNESSES:

LYNDA J. KRAMER

KAREN L. SKEELS

Subscribed and sworn to and acknowledged before me by GRACE R. MASSETT, the Testatrix, and subscribed and sworn to before me by Lynda J. Kramer and Karen L. Skeels witnesses, this the 26th day of February, 1982.

PATRICIA A. MARSH
Notary Public, State of Florida at Large

My commission expires: May 3, 1983

FIRST CODICIL TO

LAST WILL AND TESTAMENT OF

GRACE R. MASSETT

I, GRACE R. MASSETT, a resident of Osceola County, Florida, do hereby make this First Codicil to my Last Will and Testament dated February 26, 1982, as follows:

A. I hereby delete paragraph A, B and K of Article II.

B. I hereby add a new paragraph to Article II as follows:

If I have prepared a list disposing of items of tangible personal property and if the same is filed with the Circuit Court having a probate jurisdiction of my estate within sixty (60) days after the Order Admitting Will To Probate, I direct that the list become a part of my will, pursuant to the provisions of Florida Statute 732.515. All other tangible personal property I give to my

children DOCTOR HAROLD R. WEICHERT, ROBERT M. WEICHERT and ELAINE W. ROBERTS, in equal shares, share and share alike, or the survivors thereof, per stirpes.

C. I hereby delete paragraph U and V of Article III.

D. I hereby delete paragraph L of Article III and in its place and stead adopt a new paragraph L as follows: To my great grandson, ERIN ROBERTS, the sum of One Thousand ($1,000.00) Dollars.

E. I hereby delete paragraph N of Article III and in its place and stead adopt a new paragraph N as follows: To my step-nephew, THOMAS SCOTT, of Macclenny, Florida, the sum of One Thousand ($1,000.00) Dollars.

F. I hereby delete Article V and in its place and stead adopt a new Article V as follows:

ARTICLE V - CO-PERSONAL REPRESENTATIVES

I hereby nominate and appoint my

children DOCTOR HAROLD R. WEICHERT, ROBERT M. WEICHERT and ELAINE W. ROBERTS, or the survivors thereof, as Co-Personal Representatives of this my Last Will and Testament and direct that they serve without bond. I give and grant to my Co-Personal Representatives the power to sell at public or private sale from time to time for cash or upon credit, or partly for cash and partly for credit, and to transfer, convey, lease, exchange, mortgage or otherwise dispose of all or any part of the property, real, personal or mixed, at any time, from all or any part of my estate and upon such terms and conditions as my Co-Personal Representatives shall deem proper.

G. In all other respects, I hereby ratify, confirm and republish my said Last Will and Testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Delray Beach,

Florida this 15th day of December, 1988.

GRACE R. MASSETT (SEAL)

Signed, sealed, declared and published by the Testatrix, GRACE R. MASSETT, as and to be her First Codicil to her Last Will and Testament dated February 26, 1982, in our presence, who at her instance and request and in her presence and in the presence of each other have hereunto signed our names as witnesses thereto, this 15th day of December, 1988.

Connie L. Chaney Address: Boca Raton, Fl 33434.

Bonnie N. Davis Address: Delray Beach, Fl

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

We, GRACE R. MASSETT, the Testatrix, and GRACE R. MASSETT, the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the

undersigned authority that the Testatrix signed and executed as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the Testatrix, and in the presence of each other, at the instance and request of the Testatrix, signed the Codicil as a witness and that to the best of each witness' knowledge, the Testatrix was at that time eighteen (18) or more years of age, of sound mind and under no constraint or undue influence.

TESTATRIX:

GRACE R. MASSETT

WITNESSES:

Connie L. Chaney
Bonnie N. Davis

Subscribed and sworn to and acknowledged before me by GRACE R. MASSETT, the Testatrix, and subscribed and sworn to before me by Connie L. Chaney and Bonnie N. Davis, witnesses, this 15th day of December, 1988.

JAMES W. NOWLIN, JR.
Notary Public, State of Florida at Large
My Commission Expires:
October 30, 1989

WRITTEN DEFENSES

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

Respondent, Robert M. Weichert, answering the Petition For Administration of Elaine W. Roberts, petitioner, respectfully sets forth and alleges the written defenses, as follows:

1. Denies each and every allegation of petition.

FOR AN AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

2. That Grace R. Massett, the deceased, was not, at the time of her death, domiciled in Palm Beach County, Florida.

FOR ANOTHER AFFIRMATIVE AND SEPARATE DEFENSE, RESPONDENT ALLEGES:

3. That this Court lacks jurisdiction over the subject matter of this

proceeding because, at the time of her death, Grace R. Massett was not a resident of Palm Beach County, Florida.

FOR ANOTHER AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

4. That the respondent enters a "special appearance" and that this Court lacks jurisdiction over the person of respondent.

WHEREFORE, respondent demands that the Petition for Administration of Elaine W. Roberts be dismissed and that respondent have costs and disbursements of this action and for such other and further relief as the Court may seem just and proper.

Dated: July 23, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
1380 Riverbend Drive
Baldwinsville, New York 13027
(315) 635-3224

NOTICE TO ADMIT

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

Pursuant to 1.370 of the Rules of Civil Procedure, respondent makes the following demand for admission upon petitioner:

1. Admit that Grace R. Massett, at the time of her death, was married to Raymond Massett.

2. Admit that Raymond Massett is a resident and domiciliary of Esther Avenue, Bridgeport, New York.

3. Admit that Grace R. Massett sold and conveyed her real property at 236 Dixie Blvd., Delray Beach, Florida on or about December 19, 1988 and that after that date, she did not own any other real property in Palm Beach County, Florida.

4. Admit that Grace R. Massett never

resided at 312 North Swinton Avenue, Delray Beach, Florida.

5. Admit that 312 North Swinton Avenue, Delray Beach, Florida is owned by petitioner, Elaine W. Roberts.

6. Admit that, at the time of her death, Grace R. Massett was at Manor Care nursing home, Boynton Beach, Florida.

7. Admit that petitioner, Elaine W. Roberts, brought the decedent, Grace R. Massett to Manor Care nursing home, Boynton Beach, Florida from a hospital in Melbourne, Florida.

8. Admit that the decedent, Grace R. Massett, was brought to the hospital in Melbourne, Florida from St. Cloud, Florida.

9. Admit that the decedent, Grace R. Massett, was brought to St. Cloud, Florida from Bridgeport, New York.

10. Admit that, at the time of her death, Grace R. Massett was not domiciled

in Palm Beach County, Florida.

11. Admit that, at the time of her death, Grace R. Massett was not a resident of Palm Beach County, Florida.

12. Admit that Robert M. Weichert has never been served with formal notice pursuant to Rule 5.040 PGR.

13. Admit that petitioner acted as the attorney for Grace R. Massett under a power-of-attorney up until the time of her death.

Dated: July 23, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
1380 Riverbend Drive
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin
Attorneys-at-Law
50 S.E. Fourth Street
Delray Beach, Florida 33483

DEMAND FOR INTERROGATORIES

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

SIR:

PLEASE TAKE NOTICE, that pursuant to Rules 1.340 and 1.350 of the Florida Rules of Civil Procedure, petitioner is hereby required to answer under oath the interrogatories set forth below:

To the extent permitted by Rule 1.340 RCP, these interrogatories are to be deemed continuing interrogatories and the answers thereto are to be supplemented promptly upon acquisition of further additional information.

As used herein, the term "document" means any original or copy of words or information, whether produced in original or copy form by printing, typing, long-hand, or other process and regardless of

the form thereof. Said term includes, but is not limited to, published materials, reports, correspondence, records, memorandu, notices, notes, marginal notations, messages, teletype printouts and evaluations.

As used herein, the phrase "meetings and contacts: means interlocutions of any kind, including but not limited to, conferences, symposiums, meetings, dialogues, conversations between more than two people, and telephone communications.

As used herein, the term "identify" means:

(a) As to documents, give the date of each such document, the author thereof, the signer thereof, if any, the person to whom addressed, if any, any file, index, or other identifying number affixed thereto and its general common generic name, and specify the person having

custody to control thereof. (Pursuant to Rule 1.350 RCP, respondent requests that a copy of each such document be attached to or served with the answer).

(b) As to telephone conversations, give the name of the parties to each such communication and the titles of those parties, the telephone number at which the person called was reached, and the substance of the communication.

(c) As to observations, give the date of each such observation, the name of the person who observed, the name and identification of that observed, the place where the observation took place, and the substance of the observation.

(d) As to meetings and contacts, give the date of such meeting or contact, the participants thereto, and the titles of this participants, and the substance thereof. Identify all documents written during or as a result of such meeting or

contact.

(e) As to persons, give the full name of each such person, his home address and business address, if known, and his employment, job title, or designation.

All interrogatories should be answered on the basis of petitioner's knowledge or information or belief, including that of its officials, representatives, committee members, employees, agents and contractors. If any answer is given on information and belief, such fact should be stated in the answer. If any information called for in an interrogatory is being withheld on the ground that it is subject to attorney-client privilege or any other privilege, state with respect to such interrogatory that information is being withheld and state the alleged ground of the privilege.

PLEASE TAKE FURTHER NOTICE that, with

regard to documents identified in the answers to interrogatories which in addition to a request for production of that which is identified in each such answer, pursuant to Rule 1.350 RCP. Said production shall take place at 1380 Riverbend Drive, Baldwinsville, New York at 10:00 A.M., on September 4, 1990, or at such other place and time as may be agreed upon by counsel.

1. State when and how it is alleged that the decedent, Grace R. Massett, became a resident of Palm Beach County, Florida.

2. State when and how the decedent, Grace R. Massett, became a domiciliary of Palm Beach County, Florida.

3. State when and how the decedent, Grace R. Massett, re-established residency or domicile in Palm Beach County after the sale of 236 Dixie Blvd., Delray Beach, Florida.

4. Provide respondent with a photo copy of any affidavit of service upon him of Petition for Administration and further, if any service is by certified mail, return receipt requested, provide respondent with a copy of the written receipt provided by the post office to petitioner or her attorney.

5. State the date and the mode of transportation that petitioner used in transferring and transporting Grace R. Massett from the Melbourne hospital to the Manor Care nursing home in Boynton Beach, Florida.

6. State the date that Grace R. Massett arrived at the Melbourne hospital and from whence she came.

7. That prior to her entering the Melbourne hospital, state the date of her transfer from St. Cloud and further, set forth the medical reason for her entering the medical service at St. Cloud,

Melbourne or Manor Care nursing home in Boynton Beach, Florida.

8. State the date that Grace R. Massett arrived from Bridgeport, New York to St. Cloud, Florida.

9. State the period of time that Grace R. Massett has resided at Esther Avenue, Bridgeport, New York prior to her traveling to St. Cloud, Florida.

10. While residing at Esther Avenue, Bridgeport, New York, state when Grace R. Massett entered St. Joseph's hospital and the St. Camillus Rehabilitation Center, Syracuse, New York and when she was discharged from the same returning to Esther Avenue, Bridgeport, New York.

11. State the last date that Grace R. Massett ever physically resided at 236 Dixie Blvd., Delray Beach, Florida prior to her sale of the premises in December, 1988.

12. State the dates that Jeffrey

Roberts, son of petitioner, resided at 236 Dixie Blvd., Delray Beach, Florida and set forth the rental contract between Grace R. Massett and Jeffrey Roberts, son of petitioner, and set forth any monies due and owing the estate of Grace R. Massett from Jeffrey Roberts.

13. Render an itemization and description of each and every piece of Stickley furniture or Stickley product that petitioner, Elaine W. Roberts, has in her possession together with a statement of how, when, and where she obtained the same and if by purchase, provide respondent with a copy of any sales receipt or document of sale.

14. Set forth, state and provide respondent with a copy of the existence, description, nature, custody, condition and location of any books, documents or other tangible things, assets, books, records, bank statements, Merrill Lynch

statements, bills of sale, deeds, stocks, bonds, mortgages, notes and case of Grace R. Massett and the identity and location of persons having any knowledge of the aforementioned.

15. Provide respondent with a copy of the power-of-attorney that petitioner acted under for the decedent, Grace R. Massett, up until the time of her death, and further, state when petitioner first acted under said power-of-attorney and render a full and accurate accounting of any and all matters wherein petitioner acted in behalf of decedent.

Dated: July 23, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent
1380 Riverbend Drive
Baldwinsville, New York 13027
(315) 635-3224

TO: Nowlin & Nowlin, Attys
50 S.E. Fourth Street
Delray Beach, Florida 33483

NOTICE OF HEARING

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

TO: Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

PLEASE TAKE NOTICE that the Petitioner, ELAINE W. ROBERTS, by and through her undersigned attorney, will call up for hearing before the Court at 200 West Atlantic Avenue, Delray Beach, Florida, on September 9, 1990, at 10:00 a.m., Petitioner's Motion to Strike and Petition for Administration.

I HEREBY CERTIFY that a true copy of the above and foregoing Notice of Hearing was furnished to the above-named by mail, this 16th day of August, 1990.

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

By: JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

AMENDED NOTICE OF HEARING

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

TO: Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

PLEASE TAKE NOTICE that the Petitioner, ELAINE W. ROBERTS, by and through her undersigned attorney, will call up for hearing before this Court at 200 West Atlantic Avenue, Delray beach, Florida, on September 6, 1990, at 10:00 a.m., Petitioner's Motion to Strike and Petition for Administration.

I HEREBY CERTIFY that a true copy of the above and foregoing Amended Notice of Hearing was furnished to the above-named by mail, this the 17th day of August, 1990.

NOWLIN & NOWLIN, P.A.
Attorneys for Petitioner
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

By: JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

DESIGNATION OF RECORD FROM CIRCUIT COURT NOVEMBER 26, 1990

MASSETT (90-2687)

Date Filed:	Instrument:	Page No.:
7/12/90	Petition for Administration	1-4
7/12/90	Formal Notice	5
7/12/90	Certified Copy of Death Cert. of Grace Massett	6
7/12/90	Last Will & Testament of Grace R. Massett	7-11
7/12/90	First Codicil to Last Will & Testament of Grace R. Massett	12-14
7/12/90	Waiver of Priority, Consent to Appointment of Personal Representative, & Waiver of Notice & Bond-Harold R. Weichert	15
7/27/90	Written Defenses of Robert Weichert	16-23

8/20/90	Proof of Service of Formal Notice	26-27
8/20/90	Motion to Strike-Elaine W. Roberts	28
8/27/90	Correspondence from William H Pease, Asst. US Atty to Judge Michael Gersten	29-31
9/06/90	Copy of Correspondence	32
9/06/90	Order Admitting Will to Probate & Appointing Personal Representative, Judge Michael E. Gersten,9/6/90	33-34
9/06/90	Oath of Personal Representative, Designation of Resident Agent & Acceptance	35-36
9/06/90	Letters of Administration to Elaine W. Roberts Judge Michael e. Gersten,9/6/90	37
9/06/90	Opposition to Motion to Strike-Robert M. Weichert	38-64

9/27/90	Statement of Claim-Edgar Ibanez, M.D.	65
9/27/90	Notice of Appeal-Robert M. Weichert	66-67
10/03/90	Proof of Publication	68
10/05/90	Amended Notice of Appeal-Robert M. Weichert	69-70
10/16/90	Acknowledgment of Notice of Appeal-#90-2687	71
	Certificate of the Clerk	

LETTER FROM BARBARA GANTZLER, DEPUTY CLERK, PROBATE DIVISION, CIRCUIT COURT

December 4, 1990

To: Robert M. Weichert
46 Oswego Street
Baldwinsville, NY 13027

RE: Estate of Grace R. Massett,
Deceased
Case No. 90-2547-CPS
D.C.A. No. 90-2687

Dear Sir:

Enclosed please find copies of the correspondence you requested. They were filed by Judge Gersten and CANNOT be deleted just by your requests.

You have a copy of the index I sent with our bill, that is all that is required for me to send to you.

Sincerely,

BARBARA GANTZLER
Deputy Clerk
Probate Division
Circuit Court

bg
encls.

MOTION TO STRIKE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

COMES NOW Petitioner, ELAINE W. ROBERTS, by and through her undersigned attorneys and moves this Court for the entry of an order striking a Notice to Admit and Demand for Interrogatories heretofore filed by ROBERT M. WEICHERT for reason that the same is irrelevant to the matter before this Court.

I hereby certify that a true copy of the above and foregoing Motion to Strike was furnished this date to Robert M. Weichert at 46 Oswego Street, Baldwinsville, NY 13027 by regular U.S. mail and by U.S. certified mail, return receipt requested.

Dated this 16th day of August, 1990.

NOWLIN & NOWLIN, P.A.
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754

By: JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

OPPOSITION TO MOTION TO STRIKE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

STATE OF NEW YORK]
COUNTY OF ONONDAGA] SS.:

ROBERT M. WEICHERT, being duly sworn, deposes and says:

That he is one of the respondents in the above entitled action and makes this affidavit in opposition to petitioner's Motion to Strike his request for Admissions and Demand for Interrogatories, in discovery as follows:

1. Rule 1.280 of the Florida Rules of Civil Procedure provide the general provisions governing discovery and specifically, subdivision (a) thereof, provides for request for admissions and written interrogatories. Subdivision (b)

provides for the scope, and subdivision (1) thereunder states that any matter relevant, not privileged, whether it relates to the claim or defense, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2. Elaine W. Roberts, petitioner filed a petition for administration in the above captioned estate July 12, 1990, copy of which is annexed hereto and made a part hereof. Respondent, on July 27, 1990, filed with the Court written defenses together with written request

for admissions and demand for interrogatories, copy of which is annexed hereto and made a part hereof. The said written defenses, request for admissions and demand for interrogatories were served July 25, 1990 on petition and her attorney as shown by the affidavit of service attached thereto. In accordance with Florida Rules of Civil Procedure, Rules 1.340 and 1.370, both the request for admissions and demand for interrogatories were to be answered or objected to within thirty (30) days from service. The thirty (30) day time limit expired August 24, 1990. Respondent has not received any written objections or answers to the request for admissions or the demand for interrogatories in violation of the aforementioned rules. However, on August 20, 1990, four days before the expiration of the thirty (30) day time limit, respondent received a

motion to strike the request for admissions and demand for interrogatories together with an amended Notice of Hearing returnable September 6, 1990 on the grounds that the said request for admissions and demand for interrogatories are irrelevant to the matter before the Court.

3. Pursuant to First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assn., Inc., App. 4 Dist., 545 So. 2d 502 (1989) the trial court is not required to have oral argument to objections to discovery; rather, trial court may simply review discovery sought, objections thereto, and rule on objections without the necessity of a hearing. Since respondent has not received any objections, respondent prays for an Order upholding his request for admissions and demand for interrogatories and a thirty (30) day conditional Order

compelling petitioner to respond or have her petition dismissed.

4. Respondent's request for admissions does not seek admissions as to disputed facts lying at the heart of the case nor do they seek conclusions as to a matter of law. They are relevant to establish facts that contravene written and sworn allegations of Elaine W. Roberts in her petition for administration. City of Miami v. Bell, 253 So. 2d 742 (Fla. App. 1971); Carson v. City of Fort Lauderdale, App., 173 So. 2d 743.

Petitioner is not without relief. Rule 1,370(b) provides that any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. It has been decided in Pelky v. Commander Motel Corp., 510 So. 2d 965 (Fla. 4th DCA 1987) in a case where there were no belated responses, that absence

of a motion did not preclude the trial court from granting relief from admissions resulting from failure to timely respond; disagreeing with West v. West, 436 So. 2d 1010 (Fla., App. 5 Dist. 1983).

A response or affidavit on petitioner's motion to strike after the time limit has expired is not sufficient. Singer v. Nationwide Mut. Fire Ins. Co., 512 So. 2d 1125 (Fla. App. 4 Dist. 1987).

5. The State's interest in fair and efficient resolution of disputes is great enough to justify liberal discovery policy and to warrant placing the burden of establishing good cause on the party seeking protection thereunder. South Florida Blood Service, Inc. v. Rassmussin, 467 So. 2d 798 (Fla. App. 3 Dist. 1985), approved 500 So. 2d 533. It is therefore the burden of Elaine W.

Roberts, petitioner, to establish the failure of relevancy as to the request for admission and demand for interrogatories. She has failed to file and serve any written objections or answers, she has not claimed any privilege, nor is the respondent's position that any matter set forth in the demands are privileged. She has not applied for any protection order. She claims the demands are irrelevant. Deponent, respondent, submits that the Court's review of the demand for interrogatories will result in a determination of their relevancy. The demands, themselves, indicate their relevancy. Petitioner has stated as a fact, in paragraph #2 of her petition that Grace R. Massett was at the time of her death domiciled in Palm Beach, Florida. Demands 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14 and 15 all seek information to

factually establish the falsity of that allegation. Those paragraphs together with the others seek facts to determine not only the credibility of petitioner but also her qualifications under Florida Statutes 733 et seq. and are calculated to lead to the discovery of admissible evidence. They are relevant to the subject matter of the action as well as to the precise issues framed by the pleadings and are not too broad in scope. They do not call for opinions nor conclusions of law, but just the facts. Toyota Motor Corp. v. Greene, 483 So. 2d 130 (Fla. App. 1 Dist. 1986); Dotson v. Persell, 390 So. 2d 704, 19 A.L.R. 4th 1228 (1980), on remand 392 So. 2d 1008.

6. Deponent, respondent makes this affidavit in opposition to petitioner's motion to strike, submits the question on his papers filed with the Court including this affidavit and prays for an

Order denying petitioner's motion to strike and further, for an Order compelling petitioner to answer the request for admissions and demand for interrogatories within thirty (30) days of the date of the Court's Order or her petition for administration shall be dismissed.

ROBERT M. WEICHERT, PRO SE

Sworn to before me this
30th day of August, 1990.

DONNA J. SEYMOUR
Notary Public
Lic. Expires January 31, 1992

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT, P.O.BOX A, WEST PALM BEACH, FL 33402

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

ROBERT M. WEICHERT,

Respondent-Appellant,

v.

ELAINE W. ROBERTS,

Petitioner-Appellee.

CASE NO. 90-02687

L.T.CASE NO. 90-2547-CPS PALM BEACH

COMPLAINT FOR MANDAMUS

Appellant-respondent, ROBERT M. WEICHERT, for his complaint, requesting an issuance of a writ of mandamus, pursuant to F.S.A. RCP Rule 1.630, alleges as follows:

1. There is presently an appeal pending in this action which is identified by the appropriate numbers in the caption above.

2. That said Robert M. Weichert,

appellant, sought a stay of proceedings pending the appeal in the District Court of Appeal of the State of Florida, Fourth District, case number 90-2687, but said application was denied, without prejudice to the appellant seeking an order of the trial court granting a stay, a copy of which order is attached hereto and made a part hereof.

3. On November 7, 1990, said Robert M. Weichert filed with the Clerk of Circuit Court for Palm Beach County a motion for stay and supporting affidavit, copy of which is attached hereto and made a part hereof.

4. That the judge of the Circuit Court for Palm Beach County fails, refuses and neglects to make a determination on said motion for stay,

5. That the petitioner-appellee, Elaine W. Roberts, continues to act a the Personal Representative of the above

mentioned estate, is wasting the assets of the estate and obtaining receipts, and is paying or has paid money to creditors, devisees and beneficiaries of the estate, all of which acts will be voidable if appellant is successful on the pending appeal.

6. There is no more adequate remedy available to appellant-respondent, Robert M. Weichert to force the judge of the Circuit Court for Palm Beach County to render a decision either granting or denying his motion for stay of proceedings.

7. Mandamus appears to be the appropriate remedy. Reese v. Baron, App., 256 So. 2d 70 (1971); Eastmoore v. Stone, App., 265 So. 2d 517 (1972). Appellant-respondent has a clear legal right to a decision from the Circuit Court and he has no other method of redressing the failure of the Circuit Court to act on

his motion. State ex rel Lane v. Dade County, App., 258 So. 2d 347 (1972).

WHEREFORE, appellant-respondent, Robert M. Weichert, respectfully demands the issuance of a writ of mandamus of this court compelling the Circuit Court for Palm Beach County to act and render a decision on his motion for his stay of proceedings on the above captioned estate.

Dated: January 19, 1991.

ROBERT M. WEICHERT
Attorney for Appellant-Respondent
46 Oswego Street
Baldwinsville, NY 13027
(315) 635-3224

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

CASE NO. 91-0278

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____/

ROBERT M. WEICHERT,

Petitioner,

v.

ELAINE W. ROBERTS,

Respondent.

_____

RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF MANDAMUS

Respondent responds to petitioner's petition for writ of mandamus, pursuant to this court's order of February 1, 1991, as follows:

Petitioner is seeking mandamus for this court to order the trial court to rule on petitioner's motion for stay. Petitioner is not entitled to an order from this court requiring the trial court to rule. Petitioner has merely filed a motion to stay with the trial court,

however, petitioner has never called the motion up for hearing before the trial court. Until such time as petitioner calls the motion up for hearing, petitioner is not entitled to a ruling on his motion for stay.

The petition for mandamus should be denied.

I CERTIFY that a copy of the foregoing has been furnished, by mail, this 6th day of February, 1991, to: ROBERT M. WEICHERT, PRO SE, 46 Oswego Street, Baldwinsville, New York 13027.

NOWLIN & NOWLIN, P.A.
50 S.E. Fourth Avenue
Delray Beach, FL 33483
(407) 276-9754
and
LARRY KLEIN, of
KLEIN & WALSH, P.A.
Suite 503-Flagler Center
501 South Flagler Drive
West Palm Beach,FL 33401
(407) 659-5455

By: LARRY KLEIN
Florida Bar No. 043381

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.

_____/

MOTION FOR STAY

COMES NOW, the Appellant, ROBERT M. WEICHERT, PRO SE, and moves this Court for an Order staying any further proceedings in this matter pending an appeal and final decision of the Fourth District Court of Appeals for the State of Florida.

Dated: At Baldwinsville, New York
this 7th day of November, 1990.

ROBERT M. WEICHERT, PRO SE
Attorney for Respondent-
Appellant
46 Oswego Street
Baldwinsville, New York 13027
(315) 635-3224

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

AFFIDAVIT OF ROBERT M. WEICHERT

STATE OF NEW YORK]
COUNTY OF ONONDAGA] SS.:

ROBERT M. WEICHERT, being duly sworn, deposes and says:

1. That he is the Respondent-Appellant in the above entitled action.

2. That Appellant's Amended Notice of Appeal was filed October 3, 1990, copy of said Notice of Appeal is annexed hereto.

3. That Petition for Administration was filed in the Circuit Court for Palm Beach County, Florida-Probate Division on July 12, 1990, copy of said Petition is annexed hereto. That on July 25, 1990 Appellant filed Written Defenses, Notice to Admit and Demand for Interrogatories on July 27, 1990, copies of which are annexed hereto, joining issue and creating a justiciable controversy. Appellant did not receive an Answer to

determine sufficiency of the Demand for Interrogatories dated August 16, 1990, and an Amended Notice of Hearing dated August 17, 1990, copies of which are annexed hereto. The nature of the hearing was specifically to determine the sufficiency of the interrogatories. Appellant filed an Opposition to Motion to Strike on September 6, 1990, copy of same is annexed hereto. The lower court entered an Order, dated September 6, 1990, copy of which is annexed hereto, which has been appealed. Appellant has been denied his day in court, due process under the Fifth and Fourteenth Amendments of the United States Constitution, and in violation of Florida Rules of Civil Procedure.

4. That no notice of trial issue was ever filed, and discovery was not complete. Deponent has served a notice of examination before trial on Petitioner-Appellee which is scheduled for February 20, 1991, copy of which is hereto annexed.

lower court's Order will be granted.

6. In the meantime, Petitioner-Respondent indicates she will contumaciously disregard the appeal, to Appellant's possible detriment and that of the estate, see letter dated October 3, 1990 attached hereto.

WHEREFORE, Appellant prays for an Order staying all further proceedings pending the determination of the appeal by this Court.

ROBERT M. WEICHERT

Sworn to before me this
7th day of November, 1990.

DONNA J. SEYMOUR
Notary Public

Exhibits Included in Affidavit Are Attached:

Amended Notice of Appeal--page I-1

Petition for Administration--page M-1 through M-22
Written Defenses--page N-1 through N-2

Notice To Admit--page N-3 through N-5

Demand for Interrogatories--page N-6 through N-14
Motion To Strike--page S-1 through S-2
Notice of Hearing--page O-1 through O-2
Amended Notice of Hearing--page P-1 through P-2
Opposition To Motion To Strike--page T-1 through T-9

Order dated September 6, 1990--page C-1 through C-3

Notice of Examination Before Trial--included after this page

Letter of October 3, 1990--included after this page

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA. PROBATE DIVISION
FILE NO. 90-2547-CPS

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

NOTICE TO TAKE DEPOSITION
UPON ORAL EXAMINATION

SIR:

PLEASE TAKE NOTICE, that pursuant to Rule 1.310 of the Florida Rules of Civil Procedure, the testimony of **Elaine W, Roberts** whose address is 312 No. Swinton Avenue, Delray beach, Florida 33444, will be taken before a Notary Public or before some other officer authorized by law to take depositions, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the Clerk's Office of the Circuit Court for Palm Beach County, 300

N. Dixie Highway, West Palm Beach, Florida 33401 on the **20th day of February, 1991** at **10:00 o'clock in the forenoon** of that day with respect to evidence material necessary in the defense of this action:

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, the said person to be examined is required to produce at such examination the following:

ANY AND ALL books and records, documents, deeds, bank statements, canceled checks, check stubs, receipts, title certificates, Merrill Lynch monthly statements and mail pertaining to Grace R. Massett, including writings, drawings, graphs, charts, photographs, phono-records and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through

detection devices into reasonably usable form, that constitute or contain matters within the scope of Rule 1,280(b) and that are in the possession, custody or control of the party to whom the request is directed; or (2) to inspect and copy, test or sample any tangible things that constitute or contain matters within the scope of Rule 1.280(b) and that are in the possession, custody or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation on it within the scope of Rule 1,280(b).

Dated: September 11, 1990.

Yours, etc.

ROBERT M. WEICHERT, PRO SE
Attorney for Robert M.
Weichert, Respondent
1380 Riverbend Drive
Baldwinsville, New York 13027
(315) 635-3224

To: Nowlin & Nowlin, P.A.
Attys for Elaine W. Roberts
50 S.E. Fourth Avenue
Delray Beach, Florida 33483

Harold R. Weichert
103 Dorset Road
Syracuse, New York 13210

NOWLIN & NOWLIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW
50 S.E. Fourth Avenue
Delray Beach, Florida 33483
(407) 276-9754
Fax (407) 276-3859

October 3, 1990

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Mr. Robert M. Weichert
46 Oswego Street
Baldwinsville, New York 13027

Re: Estate of Grace R. Massett

Dear Mr. Weichert:

I have received your Notice of Appeal and your Amended Notice of Appeal. Since I have not done any appellate work for the last ten years, I have contacted an appellate specialist who is standing by to represent the estate should it become necessary in the future. I have made a note on my calendar as to the next item required under the Appellate Rules.

In the meantime, your sister is the Personal Representative and the administration of the estate must go on. Letters of Administration were issued to her on September 6, 1990 which means that she is required to file an Inventory on November 5, 1990. In order to prepare this Inventory, it is necessary to secure a list of all of the assets and since Elaine tells me that you had possession of some of your mother's records and assets, demand is made upon you to

furnish to the Personal Representative of the estate all tax returns, all bank records, all stockbroker records, and any information you may have as to assets or claims your mother may have had, or any possible claims against her, so that we may properly administer the estate.

I have received from your brother, Harold, his consent to Mrs. Roberts' making distribution to the specific devisees under the Will, and I would appreciate your sending the same so that we may make distribution to the beneficiaries who, of course, include your children among other people. If you wish to give the consent without prejudice to your rights under the appeal, I have no problem with that. For your information, the Notice of Administration in this estate was published for the first time on September 13, 1990 which means that the creditors' period will expire on December 13, 1990. With cooperation from all the beneficiaries, I can have this estate closed by around the first of the year, and I am sure the other members of the family would appreciate your consideration of this.

Yours truly,

JAMES W. NOWLIN, JR.
For the Firm

JWJR:rdq
cc: Elaine W. Roberts
Harold R. Weichert

RESPONSE TO MOTION FOR STAY

IN THE DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA, FOURTH DISTRICT

IN RE: ESTATE OF
GRACE R. MASSETT,
DECEASED.
_____/

ROBERT M. WEICHERT,

Respondent-Appellant,

v.

ELAINE W. ROBERTS,

Petitioner-Appellee.
_____/

CASE NO. 2687
L.T. CASE NO. 90-2547 CPS

COMES NOW the Appellee, ELAINE W. ROBERTS, as Personal Representative of the Estate of Grace R. Massett, deceased, and files this her response to the Motion for Stay heretofore filed by Appellant, ROBERT M. WEICHERT, and shows to the Court as follows:

1. The Motion for Stay was filed in the "Fourth District Court of Appeals for the State of Alaska" (sic).

2. Florida Rules of Appellate

Procedure 9.310(a) states: "Except as provided by general law and in section (b) of this Rule, a party seeking to stay a final order pending review shall file a motion in the lower tribunal, which will have continued jurisdiction, in its discretion, to grant, modify or deny such relief".

3. 3 Fla. Jur 2d Appellate Review §139 provides "The allowance or denial of a stay in appeal from a judgment or decree other than those where a stay is automatic rests within the sound discretion of the trial court, subject to review by the appellate court where the order is deemed to be arbitrary or unreasonable".

4. Appellant has failed to allege any attempt to secure a stay in the Circuit Court of Palm Beach County, Florida, nor has he alleged any reason for this Court to waive the requirements of Rule

9.310(a).

WHEREFORE, Appellee respectfully asks this Court to enter its order denying the Motion for Stay filed by Appellant.

I hereby certify that a copy of the foregoing has been served on Appellant Robert M. Weichert at 46 Oswego Street, Baldwinsville, New York 13027, by U.S. mail, this the 5th day of November, 1990.

NOWLIN & NOWLIN, P.A.
Attorneys for
Petitioner/Appellee
50 Se Fourth Avenue
Delray Beach, FL 33483
(407) 276-9754

by: JAMES W. NOWLIN, JR.
FLORIDA BAR NO. 59148

Supreme Court, U.S.
FILED
AUG 22 1991
OFFICE OF THE CLERK

91-305
No. _____

In The
Supreme Court of the United States
October Term, 1991

ROBERT M. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

Petition For Writ Of Certiorari To The Fourth District Court Of Appeal, State Of Florida

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NOWLIN & NOWLIN, P.A.
50 S.E. Fourth Avenue
Delray Beach, FL 33483
(407) 276-9754
and
LARRY KLEIN, OF
KLEIN & WALSH, P.A.
Suite 503 – Flagler Center
501 South Flagler Drive
West Palm Beach, FL 33401
(407) 659-5455

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PREFACE

The parties will be referred to as the petitioner and respondent or by their proper names. The following symbols will be used:

(A) – Petitioner's appendix

(R) – Respondent's appendix.

STATEMENT OF THE CASE

We cannot agree with petitioner's statement of the case because it includes facts which are neither true nor in the record.

Decedent's last will was executed in February of 1982 (A-M-8). It stated that she was a resident of Palm Beach County, Florida. Under that will, petitioner, Robert M. Weichert, was named a co-personal representative with another person. On December 15, 1988, decedent executed a codicil to her will in which she deleted that provision of the 1982 will making Robert M. Weichert co-personal representative, and appointed all three of her children, Harold R. Weichert, Robert M. Weichert, and Elaine W. Roberts, as co-personal representatives. That codicil stated that the decedent was a resident of Osceola County, Florida, and was executed in Delray Beach, Florida (A-M-18).

Elaine W. Roberts, respondent, filed a petition for administration stating that the decedent's last known address was in Delray Beach, and that she died in the Manor Care Nursing Home, Boynton Beach, Florida (A-M-1). It further stated that at the time of her death

decedent was domiciled in Palm Beach County, Florida. Her petition also stated that she was qualified to serve as personal representative, that Harold R. Weichert had waived his right to serve as co-personal representative and joined in her petition, and that Robert M. Weichert was not qualified because of Section 733.303, Florida Statutes (1990). That statute provides that a convicted felon cannot serve as a personal representative. Petitioner, Robert M. Weichert, is a convicted felon. He was convicted of bankruptcy fraud and conspiracy to commit bankruptcy fraud, and was sentenced to three years imprisonment. Prior to committing those offenses he was disbarred as a lawyer in the State of New York for other misconduct (R 1).

An evidentiary hearing, after notice, occurred on the petition for administration on September 6, 1990, and the lower court entered an order admitting the will to probate and appointing Elaine Roberts as personal representative on that date. In that order the court found that Robert M. Weichert was not qualified to serve as personal representative (A-L-1). The testimony at that hearing was not transcribed.

SUMMARY OF ARGUMENT

Section 733.303(1)(a), Florida Statutes, which prohibits a convicted felon from serving as a personal representative, is not unconstitutional. In addition petitioner's argument is moot because this estate has now been fully administered.

ARGUMENT

Section 733.303(1)(a), Florida Statutes, provides:

> (1) A person is not qualified to act as a personal representative if:
>
> (a) He has been convicted of a felony.

Although petitioner's sole basis for seeking review in this court is that the above statute is unconstitutional, petitioner did not raise the constitutionality of the statute in the trial court. Petitioner's argument in the trial court was that the decedent died a resident of New York. Apparently petitioner was attempting to evade the prohibition against convicted felons serving as personal representatives in Florida by arguing that the decedent was a resident of New York when she died.

Petitioner did argue in the Florida Appellate Court that the statute was unconstitutional, however petitioner cited no authority for that argument, and he cites no authority in his petition for certiorari. There are numerous obvious reasons why a convicted felon should not be able to serve as a personal representative, since a personal representative is entrusted with the assets of a decedent's estate, and is in a fiduciary duty to the beneficiaries and creditors. The statute is not unconstitutional.

The constitutionality of the statute prohibiting petitioner from serving as personal representative is also moot in this case. This will was admitted to probate on September 6, 1990 (A-C-3), and at this point in time administration of this estate is complete. But for the filing of this petition for certiorari the administration of this estate would be concluded.

CONCLUSION

Section 733.303(1)(a), Florida Statutes, prohibiting convicted felons from serving as personal representatives, is not unconstitutional. The petition for certiorari should be denied.

Respectfully submitted

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SEAL

U.S. Department of Justice
United States Attorney
Northern District of New York

August 3, 1990 *900 Federal Building* *315/423-5165*
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Syracuse, New York 13260

Ms. Elaine W. Roberts
312 N. Swinton Ave.
Delray Beach, FL 33444

RE: United States v. Robert M. Weichert
Criminal Action No. 84-CR-139

Dear Ms. Roberts:

At the request of your brother, Dr. Harold Weichert, I enclose herewith a copy of the Judgment and Committment [sic] Order in the above referenced criminal action.

As appears from the judgment and committment order, defendant Robert M. Weichert was convicted under several counts of bankruptcy fraud and conspiracy to commit bankruptcy fraud and was sentenced to a total of three years imprisonment, five years probation, fines and restitution. Originally Mr. Weichert was sentenced to pay $200,000 in restitution but that figure was subsequently reduced to approximately $156,000.

Several years before the commission of the offenses which resulted in this conviction, Mr. Weichert was disbarred as an attorney in the state of New York for various acts of malfeasance in connection with his handling of his client's assets.

If this office can be of further assistance, please advise.

Yours very truly,

FREDERICK J. SCULLIN, JR.
United States Attorney

/s/ William H. Pease
By: William H. Pease
Assistant U.S. Attorney

WHP/mag
Enc.

91-305

No. (3)

Supreme Court, U.S.
FILED
AUG 30 1991
OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

October Term, 1991

IN RE: GRACE R. MASSETT,
Deceased.

ROBERT M. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI ON APPEAL FROM DISTRICT COURT FOR THE FOURTH DISTRICT-STATE OF FLORIDA

REPLY TO BRIEF IN OPPOSITION

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PREFACE

The parties will be referred to as the petitioner and respondent or by their proper names. The following symbols will be used:

(A) - Petitioner's appendix

(R) - Respondent's appendix.

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REPLY TO BRIEF IN OPPOSITION

This reply brief is filed by petitioner pursuant to Rule 15.6. of the Rules of the Supreme Court of the United States.

Addressing the arguments first raised in the brief in opposition, petitioner respectfully alleges and shows to the court as follows:

1. The estate has not been fully administered. Petitioner, as one of the primary heirs and devisees, has received nothing, and the order allowing the account of Elaine W. Roberts, personal

representative, is presently on appeal because she has converted items of personal property in the estate to her own use. Petitioner's argument is not moot.

2. No evidentiary hearing was ever noticed, or occurred on September 6, 1990 (A-L-1). The lack of transcription or record is solid evidence of that fact. September 6, 1990 was the date set by the Circuit Court to hear argument on the motion to strike the demand for admissions and interrogatories.

3. It is not true, as alleged in the brief in opposition, that review in this court is sought solely on the basis of the unconstitutionality of Section 733.303(1)(a), Florida Statutes. The lower courts have proceeded without jurisdiction, either subject matter or inpersonam jurisdiction of petitioner. Petitioner was never duly served with

process. The decedent was not domiciled nor was a resident of Florida. The execution of the will and codicil are not controlling and have very little relevance as to where the decedent was domiciled or was a resident at the time of her death, especially in light of her New York re-marriage.

4. The information concerning petitioner as a convicted felon was surreptitiously and, without any notice to petitioner, obtained and inserted in the Circuit Court record, giving petitioner no opportunity to argue against it or have his day in court. Petitioner was unaware of any such information until the designation of the record on appeal. Respondent's statement that petitioner was attempting to evade such prohibition against convicted felons is simply not true, nor supported by the facts and circumstances of the record.

5. Petitioner prays that this court will allow a full briefing on the constitutionality of Section 733.303(1)(a) of the Florida Statutes so that petitioner will be allowed to amplify his argument that no state should be allowed arbitrary and capricious discrimination against a very large statistical segment of the American population, without some sort of evidentiary hearing to determine their qualifications to act as a personal representative, executor or administrator of an estate when:

(A) A simple surety bond would satisfy any doubt or anxiety as to such qualifications.

(B) That, in this case, petitioner was to serve jointly with his brother and sister and could never have acted in his individual capacity.

(C) That the age, nature, facts and

circumstances of the conviction could have no relevancy as to their qualifications to serve an estate.

6. The statement by respondent..."This will was admitted to probate September 6, 1990, and at this point in time administration of this estate is complete. But for the filing of this petition for certiorari the administration of this estate would be concluded." is patently false.

Dated: August 29, 1991.

Respectfully submitted,

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